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UDA HOLDINGS BHD

v.

PENTADBIR TANAH WILAYAH PERSEKUTUAN KUALA LUMPUR

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HIGH COURT MALAYA, KUALA LUMPUR
PRASAD SANDOSHAM ABRAHAM J
[SUIT NO: 25NCVC-14-04/2012]
6 JULY 2012

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***LAND LAW**: Acquisition of land - Award - Objection against - Time period within which objection to award (Form N) must be filed with Land Administrator ('LA') - Whether six weeks from date LA made award if objector present when award made - Whether special circumstances existed for objector to be granted extension of time to file Form N - Whether genuine mistake or*

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uncertainty over when objection should be lodged constituted special circumstances - Land Acquisition Act 1960, ss. 14, 16, 38(3)(a) & 38(4)

The applicant's land, on which stood Bangunan Plaza Warisan Kuala Lumpur, was acquired by the government for the purpose of the Mass

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Rapid Transit project. After the relevant notices under the Land Acquisition Act 1960 ('the Act') were served on the applicant and gazetted, the respondent held enquiries over several days to determine the compensation payable. On the final day of the enquiry, on 27 October 2011, the respondent made an award for the acquisition of

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the land in the presence of the applicant. On 12 December 2011, the applicant received from the respondent the Form H (Notice of Award and Offer of Compensation) under s. 16 of the Act. On the same day, the applicant sent to the respondent, *inter alia*, the requisite copies of Form N (Application that an Objection be referred to court) under s. 38(1) of the Act. The respondent returned the Form N to the

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applicant stating that it was out of time under s. 38(3)(a) of the Act to file the Form N. The applicant appealed to the respondent saying it could not have made the objection earlier without having received the respondent's written award. When the respondent maintained its stand, the applicant filed the instant application in court to direct the respondent

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to receive the Form N and deem it to have been served on the respondent within time. Alternatively, it sought an extension of time under s. 38(4) of the Act to file the Form N. The respondent contended that under s. 38(3)(a), Form N had to be filed within six weeks from the date the award was made, *ie*, 27 October 2011, and that the

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applicant was out of time. The applicant conversely argued that time only started to run from the date it received the Form H and that therefore it was within time.

Held (granting the applicant extension of time to file the Form N with no order as to costs):

(1) Section 38(3)(a) of the Act expressly provides that where the applicant, as in this case, was present when the respondent made its award, the period to file the notice of objection (Form N) ran for six weeks from the date the award was made under s. 14 of the Act. Therefore, the applicant was out of time in filing the Form N and the prayer to direct the respondent to receive the Form N was dismissed. (paras 10 & 13)

(2) Section 38(3)(a) made no reference at all to s. 16 of the Act. Had the applicant not been present at the enquiry then the argument that the six weeks ran from the receipt of Form H would have been tenable. (para 10)

(3) The court was of the view that special circumstances existed for it to exercise its discretion to extend time for the Form N to be filed with the respondent. The authorities were not in sync as to the proper approach to be taken by the applicant and the applicant could not be faulted for taking the position that time started to run from service of the Form H. The conduct of the applicant also suggested they took reasonable steps to redress the problem they faced. (para 18)

(4) Section 38(4) of the Act provided an avenue to the court to temper the rigidity of the law and procedure set out in the Act. In determining whether special circumstances existed, the court must be guided by the facts of each case, weigh the interest of a landowner being dispossessed of his land as opposed to the interest of the acquirer and balance the contradicting interests. (para 18)

[Commentary: Section 38(3)(a) and (b) of the Act clearly set out the different time periods for making an objection to an award. Section 14 states that at the conclusion of the enquiry, the LA shall prepare a written award under his hand in Form G and that it was to be filed in his office. It is only s. 16 which talks about service on the landowner of the Notice of Award and Offer of Compensation in Form H and s. 16(2) states that Form H "shall include an extract from the written award of the LA made in Form G". Perhaps this was what prompted the learned judge to remark that the applicant could not be faulted for taking the position that time only started to run from service of Form H. Such genuine mistake coupled with the applicant's conduct formed the special circumstances that existed to enable the court to grant the applicant extension of time].

Case(s) referred to:

Dynamic Plantations Bhd v. Pentadbir Tanah Daerah Segamat [2008] 3 CLJ 37 HC ***(refd)***

Lau Cher Hian v. Collector of Land Revenue, Muar [1969] 1 LNS 77 FC ***(refd)***

Penang Development Corporation v. Collector of Land Revenue, Penang & Anor [1975] 1 LNS 122 HC ***(refd)***

Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan [2009] 1 CLJ 13 FC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 4, 8, 10, 14(1), (2), 16(2), 38(1), (2), (3)(a), (b), (4)

For the applicant - Nazeera Hanifa; M/s Ghazi & Lim
For the respondent - Narkunavathy Sundareson (SC Kong with him); FCs

Reported by Ashok Kumar

JUDGMENT

Prasad Sandosham Abraham J:

[1] Enclosure 1 is an application by the applicant by way of motion to direct the respondent to receive Form "N" pursuant to the Land Acquisition Act 1960 (the said Act), which was served on the respondent on 22 December 2001. Such service was to be deemed within the prescribed time or alternatively a prayer for extension of time be granted to the applicant to file the same fourteen days from the date of this order, if granted.

[2] The chronology of events in respect of this matter are set out in the applicant's written submissions and are not really in dispute. I set out the same.

[3] Chronology of Events:

11 February 2011	Form A (notice that land is likely to be acquired) under s. 4 of Land Acquisition Act 1960 ("the Act") dated 11 February 2011 has been gazetted on Lot 23, s. 28, Title No. PN 27404 (Bangunan Plaza Warisan) Kuala Lumpur ("the Lot") for Mass Rapid Transit (MRT) Lembah Klang, Jajaran Sg Buloh-Kajang.

27 June 2011	Form D (declaration of intended acquisition) under s. 8 of the Act dated 27 June 2011 has been gazette on the lot.
22 July 2011	Applicant received Form E (intended acquisition: notice of enquiry) under s. 10 of the Act dated 21 July 2011 on 22 July 2011 from the respondent where the enquiries have been held on 15 August 2011, 19 September 2011 to 22 September 2011 and 27 October 2011.
27 October 2011	An award of RM44,345,000 has been made as compensation for the acquisition of the lot. The applicant was present.
12 December 2011	The applicant received Form H (notice of award and offer of compensation) under s. 16 of the Act dated 30 November 2011 on 12 December 2011 from the respondent.
12 December 2011	The applicant has sent a letter dated 22 December 2011 enclosing one original copy of Form H, eight original copies of Form N (applicant that an objection be referred to the court) under s. 38(1) of the Act and a cheque with the sum of RM3,000 as deposit for objection to the respondent.
23 January 2012	The respondent through a letter dated 16 January 2012 returned the applicant's objection documents with the cheque of RM3,000 due to the reason that the application has been caught by the limitation set forth in s. 38(3)(a) of the Act. This letter was only received by the applicant on 23 January 2012.
2 February 2012	The applicant had sent a letter dated 2 February 2012 appealing to the respondent for the objection to be referred to the court. Enclosed with the letter is the Form H and a cheque of RM3,000 as deposit for objection. The applicant contended that the objection could not be made without prior receiving a written award from the respondent.

24 February 2012	The respondent through a letter dated 20 February 2012 returned the applicant's objection documents with the cheque of RM3,000 due to the reason that the period of six weeks from the date of the award as provided under s. 38(3)(a) of the Act has lapsed. This letter was only received by the applicant on 24 February 2012.

Enclosure 1 is dated 20 April 2012.

The First Issue

[4] The respondent takes the view that s. 38(3)(a) of the Land Acquisition Act 1960 requires Form "N" which is the notice to require the respondent to refer the objection to the award, to court within six weeks from the date of the award being made, ie, 27 October 2011, and the applicant was out of time. The applicant argues time starts to run from the receipt of the Form "H" from the respondent, ie, 12 December 2011 and therefore the applicant was well within time when they lodged Form "N".

[5] To deal with the submissions tendered to court by way of written submissions and orally made, it would be prudent for this court to examine the relevant provisions of the said Act.

[6] The respondent after having made on enquiry and concluding it, will prepare a written award under his hand in Form "G" of the said Act and every such award shall be final. This is clearly set out in ss. 14(1) and (2) of the said Act and I now set out the relevant provisions.

14. Award of the Land Administrator

(1) Upon the conclusion of the enquiry under section 12 relating to any scheduled land the Land Administrator shall prepare a written award under his hand in Form G, in which he shall, in respect of each separate area of scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry.

(2) Every award prepared under subsection (1) shall be filed in the office of the Land Administrator and shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Land Administrator, and of the apportionment of the compensation awarded by the Land Administrator, whether the persons interested therein have or have not appeared at the enquiry.

Looking at Form "G", the form is also headed written award of compensation.

[7] The next step is s. 16 of said Act, which requires Form "H" to be served on the applicant by the respondent looking at Form "H", it is headed Notice of Award and offer of compensation. What is pertinent to note is s. 16(2) of the said Act, ie, Form "H" will include an extract from the written award of the respondent in Form "G" referred to aforesaid. Section 16(2) is also set out.

16. Service of award

(2) Every notice in Form H shall include an extract from the written award of the Land Administrator in Form G, relating to the land in which the person to whom such notice is addressed has an interest.

[8] If the applicant wished to raise an objection to the award, the applicant would have to serve Form "N" to the respondent pursuant to s. 38(1) and (2) of the said Act. The bone of contention arises out of respective parties interpretation of s. 38(3)(a) and (b) of the said Act which I now set out:

38. Form and content of application, *etc*

(3) Every application under subsection (1) shall be made:

(a) if the person making it was present or represented before the Land Administrator at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator's award under section 14;

(b) in other cases, within six weeks of the receipt of the notice from the Land Administrator under section 16 or within six months from the date of the Land Administrator's award under section 14 whichever period shall first expire.

[9] The question for the court to adjudicate upon is from when the six weeks time period for serving Form "N" begins to run. Looking at s. 14(1) of the said Act it clearly provides that upon a conclusion of the enquiry held by the respondent the respondent prepares a written award under his hand under Form "G".

[10] To my mind Form "G" is not an offer of compensation but a written award and is final and conclusive as provided in s. 14(2) of the said Act. Section 16 deals with the service of the said written award under s. 14(1) by issuing of Form "H". Section 38(3)(a) of the Act, provides expressedly that as in our case the applicant was present when the respondent made its award, the period to file the Notice of Objection runs within six weeks from the date of the Land Administrator's award under s. 14 of the Act, with regards to filing of the Notice of Objection

to the award Form "N", s. 38(3)(a) of the Act applies and it is to be observed, the said section makes no reference at all to s. 16 of the said Act. It is also to be noted that had the applicant not been present at the enquiry then the argument that the six weeks runs from receipt of Form "H" would tenable but not so in this case.

[11] I am unable to accept submissions of counsel for the applicant that Form "G" pursuant to s. 14(1) of the said Act is merely an offer subject to Form "H" being issued and served on the applicant. In my view the provisions of the said Act are clear and s. 16 relates to the service of the written award of the respondent in Form "H" and the options that are statutorily options available to the applicant. Section 38(a) of the said Act clearly sets out when the prescribed period the objection is to be filed and is to run from, ie, from the time the respondent made his award. I find support for my approach in the dictum of His Lordship Zulkefli Ahmad Makinudin FCJ in the decision of the Federal Court in *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* reported in [2009] 1 CLJ 13, and particularly at p. 31 of the report para. 73 and I quote:

> [73] It is my view that if at all there has been a non-compliance by the respondent of the statutory requirements under the Act in making the award under s. 14 of the Act, this issue should be taken up and argued at the hearing of the objection of the appellant in the reference to the High Court under s. 36 of the Act. In fact on this point the appellant as an aggrieved party has a recourse to state his case in challenging the award of the respondent at that stage of the proceedings by producing its own Private Valuation Report before the court. But this is not the case before us now. The true position in the present case is that the appellant had been out of time in filing its application for objection to the award within six weeks from the date of the Land Administrator's award was made under s. 14 of the Act. The appellant in fact has already failed in the first hurdle of satisfying the High Court and the Court of Appeal of the justification to grant enlargement of time to file objection proceedings under Form N.

[12] I refer also the case of *Dynamic Plantations Bhd v. Pentadbir Tanah Daerah Segamat* reported in [2008] 3 CLJ at p. 37 which forms the pivot of the applicant's submissions. In view of my interpretation of the relevant sections of the said Act I with respect, I am unable to agree with the views expressed by His Lordship in that case.

[13] I therefore rule that in this case where the applicant was present, when the respondent made his award, the period to file the objection runs from six weeks from the date the award was made and therefore the applicant was out of time in filing of Form "N" and therefore prayer 1(a) of encl. 1 is dismissed.

[14] With regards to prayer 1(b), the application is made pursuant to s. 38(4) of the said Act which reads: A

> 38(4) The period of six weeks prescribed by subsection (3)(a) and the periods of six weeks and six months prescribed by subsection (3)(b) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit. B

[15] There must exist special circumstances for the court to exercise its discretion. The Federal Court in the case of *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Port Dickson* reported in [2009] 1 CLJ 13 and p. 15 where Per Alauddin Mohd Sheriff CJ (Malaya) said: C

> (3) Even assuming for a moment that there was non-compliance of the statutory requirements under the Act, in particular paras. 1(1)(b) and 2(d) of the First Schedule, by the LA while making the award under s. 14 of the Act, it did not result in any serious injustice or prejudice to the appellant. The difference in the date of valuation ie, from 19 February 2002 to 11 April 2002, was only 52 days. In that short period, the value of the scheduled land would not have increased significantly. Any prejudice or injustice, if at all, caused to the appellant was the result of its own attitude. Had the appellant remained vigilant in making the application for enlargement of time, it would have had the opportunity to ventilate its case before the High Court. But it chose to remain nonchalant and treated its right with apathy. D E

[16] The key words used was prejudice accruing to the applicant or injustice I also refer to the decision of the Federal Court in *Lau Cher Hian v. Collector of Land Revenue, Muar* reported in [1969] 1 LNS 77 where it was held Per Ong CJ (Malaya) and I quote: F

> When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment. That, I believe, to be the reason why the Court is given a discretion to temper the rigidity of the law. "Special grounds" were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, *bona fide* mistake or mere 'ignorance of the law' should be left out altogether when considering special grounds. G H

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[17] I also refer to the case of *Penang Development Corporation v. Collector of Land Revenue, Penang & Anor* reported in [1975] 1 LNS p. 122 and to the judgment of Arulanandom J and I quote:

> Section 38 of the Act stipulates that this time limit shall not be capable of enlargement by any Court except in such special circumstances as the Court may think fit. Hence there is a discretion given to the Court although in a qualified manner and as long as circumstances exist which in the opinion of the Court are special, the Court can exercise its discretion.

And also I quote further from His Lordship's judgment.

In *Re Norman* [1886] 16 QBD 673, CA Lopes LJ says:

> The statute uses the words 'special circumstances'. Those are wide comprehensive and flexible words and I think the legislature intended them to be so and that no Court can or ought to lay down any exhaustive definition of them ... It is for the discretion of the Judge to say what are special circumstances in a particular case.

In *Re Boycott* [1885] 29 Ch D 571, CA Bowen LJ said:

> Special circumstances I think are those which appear to the Judge so special and exceptional as to justify taxation. I think no Court has a right to limit the discretion of another Court though it may lay down principles which are useful as a guide in the exercise of its own discretion.

[18] To determine whether 'special circumstances exist' the court must be guided by the facts of each case and must weigh the interest of a land owner to being dispossessed of their land as opposed to the interest of the acquirer pursuant to the said Act and balance the contradicting interests. Section 38(4) of the said Act, clearly provides an avenue to the court to temper the rigidity of the law and procedure set out in the said Act. The court in deciding whether or not to exercise its discretion should consider on the facts of the case, whether justice requires the court's intervention and each case should be decided on its own facts. Having read the affidavits of the applicant the court is of the view that there exist special circumstances for the court to exercise its discretion to extend the time for Form "N" to be filed with the respondent. The authorities were not in sync as to the proper approach to be taken by the applicant and the applicant cannot be faulted for taking the position that time starts to run from service of Form "H". I also find the conduct of the applicant suggests they took reasonable steps to redress the problem they faced.

[19] The court therefore orders as follows. Order in terms of prayer 1(b) and (d) of encl. 1 with no order as to costs.